

REMARKS

As set forth in section 4 of the Office Action, Claims 18-25 are rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. § 251. By section 3 of the Office Action, the reissue oath/declaration filed with the instant application was stated to be defective for three reasons. First, the Office Action asserts that the reissue oath/declaration did not state how the errors in Claims 1-17 were corrected in the new Claims 18-25. Additionally, the Office Action states that the “reissue oath/declaration must identify the foreign application, if any, on which foreign priority is being claimed.” Lastly, by the Office Action, the “supplemental reissue oath/declaration must include for amended claim 25.”

First, Claims 1-17 were the claims that originally issued in U.S. Patent No. 5,414,662 and were reissued in U.S. RE37641. The undersigned has been unable to find in the rules or the MPEP a requirement that the Applicant state how the errors have been corrected in the new claims. To the contrary, the MPEP states that “[t]he corresponding corrective action which has been taken to correct the original patent need not be identified in the oath/declaration.” MPEP § 1414 (Rev. 5, Aug, 2006), page 1400-33, left column, fourth full paragraph. Therefore, no such statement is presented in the attached supplemental declaration and reconsideration is requested.

Additionally, when a continuing reissue application does not replace its parent reissue application, which is the present case, the oath/declaration must “identify[y] at least one error in the original patent which has not been corrected by the parent reissue application or an earlier reissue application.” MPEP § 1414 (Rev. 5, Aug. 2006). Such a statement was made in the Declaration for Continuation of Reissue Patent Application filed on May 20, 2002. By the MPEP,

In the supplemental reissue oath/declaration, there is **no need to state an error** which is relied upon to support the reissue application if:

(A) an error to support a reissue has been previously and properly stated in a reissue oath/declaration in the application; and

(B) that error is still being corrected in the reissue application.

MPEP § 1414.01, subsection I (Rev. 5, Aug. 2006), page 1400-43 (emphasis in original). As the error previously and properly stated in the Declaration filed on May 20, 2002 is still being corrected in the reissue application, no statement of an error which is relied upon to support the reissue application is presented in the attached supplemental declaration. Instead, the acceptable language suggested by the MPEP is included. MPEP § 1414.01 (Rev. 5, Aug. 2006), page 1400-43, left column, third paragraph.

Second, the Office Action states that the Declaration must identify any foreign applications on which foreign priority is being claimed. The Applicant appreciates the Examiner noting this lapse and the attached addresses the concern. Since it is believed that the attached Declaration resolves the issue, it will not be discussed further.

Lastly, when Claim 25 was originally filed, it depended from a canceled claim (Claim 7), which required it to be amended. In the December 10, 2002 Amendment, Claim 25 was amended to depend from Claim 24. The attached Declaration includes the date of the previously mentioned Amendment to make it "clear that the supplemental reissue oath/declaration addresses all errors corrected subsequent to the date upon which the last reissue oath/declaration... was filed." MPEP § 1414.01 (Rev. 5, Aug. 2006). Accordingly, it is believed that the attached Declaration resolves the issue detailed in the Office Action, so it will not be discussed further.

Information Disclosure Statement

An Information Disclosure Statement (IDS) is being filed concurrently herewith. Entry of the IDS is respectfully requested.

CONCLUSION

In view of the above remarks, it is believed that all of the Examiner's concerns have been addressed, and it is respectfully requested that the application be passed to issue. The attached Declaration is being submitted unsigned because it will be signed upon receiving approval from the Examiner. If the Examiner feels that a telephone conference would expedite allowance, the Examiner is invited to call the undersigned at (978) 341-0036.

Respectfully submitted,

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